

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X :
 : No. 10-CV-4572 (ERK) (CLP)
WILLIAM BURNS and THERESA BLACK, :
Individually and on Behalf of All Others Similarly :
Situating, :
 :
Plaintiff, :
 :
-against- :
 :
FALCONSTOR SOFTWARE, INC.; ESTATE OF :
REIJANE HUAI; SHUWEN HUAI, as :
Executor/Fiduciary of the ESTATE OF REIJANE :
HUAI; and JAMES WEBER :
 :
Defendants. :
-----X :

**NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

PLEASE TAKE NOTICE that pursuant to Rule 23 of the Federal Rules of Civil Procedure, Lead Plaintiff William Burns, (“Lead Plaintiff”), through his attorneys, The Rosen Law Firm, respectfully moves this Court for an Order:

- (a) Preliminarily certifying the Class for the purposes of settlement;
- (b) Preliminarily approving the terms of the settlement set forth in the attached Stipulation and Agreement of Settlement dated May 6, 2013 (the “Stipulation”) entered into by the parties;
- (c) Establishing a date for a hearing to determine the fairness, reasonableness, and adequacy of the settlement set forth in the Stipulation; and
- (d) Providing for notice to Class Members of the hearing on the proposed settlement and dismissal of the Action.

The Stipulation is intended to fully and finally settle the instant class action, upon submission to stockholders and final Court approval. The purpose of this motion is to obtain preliminary court approval of the Stipulation and the form of notice of the proposed settlement to be disseminated to Class Members. The terms of the settlement are set forth in full in the Stipulation, which together with each of the exhibits to which it refers, is presented contemporaneously with this motion. Preliminary approval of the settlement, and the submission of the settlement to the Class Members, are warranted because the “proposed settlement is fair, reasonable, and adequate,” and “the interests of the class are better served by the settlement than by further litigation.” *Manual for Complex Litigation*, Fourth § 21.61 at 309 (2004).

All parties to the Settlement (the “Settling Parties”) have agreed to the Stipulation and the exhibits thereto, and all Settling Parties have consented to this motion. There are no legal or factual issues in dispute. All Settling Parties have agreed that a Class, as described in the Stipulation, should be certified for purposes of this settlement.

The Settling Parties respectfully request that the Court set the date for hearing on final approval of the proposed Settlement at least one hundred twenty (120) days from the date of entry of the Proposed Order for Preliminary Approval of the Settlement and Providing for Notice to the Class. (See ¶ 4 of the Proposed Order Preliminarily Approving Settlement and Providing for Notice, attached as Exhibit A to the Stipulation.) This will provide the Settling Parties sufficient time to give notice of the settlement to Class Members, to process any potential objections and opt-outs, and to fully prepare for the hearing on final approval of the proposed settlement.

Dated: June 14, 2013

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

/s/ Phillip Kim

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Lead Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that on this on the 14th day of June 2013, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Phillip Kim